

**NORTH CAROLINA STATE BAR
SYNOPSIS OF COUNCIL ACTION
JANUARY 19, 2007**

RECOGNITION OF NEW COUNCILORS – The following new councilors were recognized and welcomed:

David N. Allen, District 26, Charlotte
Julius E. Banzet, III, District 9, Warrenton
Robert J. Bernhardt, District 26, Charlotte
Nancy S. Ferguson, District 18, Greensboro
Forrest A. Ferrell, District 25, Hickory
Howard L. Gum, District 28, Asheville
Donald E. Harrop, Jr., District 11, Dunn
F. Fincher Jarrell, District 26, Charlotte
William R. Purcell, District 16A, Laurinburg
G. Gray Wilson, District 21, Winston Salem
Cynthia L. Wittmer, District 10, Raleigh

APPOINTMENTS – The Council made the following appointments:

Lawyer Assistance Program Board – The Council appointed Mark W. Merritt of Charlotte and Burley B. Mitchell, Jr. of Raleigh to three-year terms and Nancy S. Ferguson of Greensboro to fill the unexpired term of Sara H. Davis. The Council reappointed Fred J. Williams of Durham to a three-year term. Samuel F. Davis, Jr. of Concord, who was serving as vice chair, was appointed as chair and Fred J. Williams was appointed as vice chair.

Disciplinary Hearing Commission – The Council appointed J. Michael Booe of Charlotte to fill the unexpired term of Karen Eady-Williams, Robert F. Siler of Franklin to fill the unexpired term of Charles M. Davis, and C. Colon Willoughby, Jr. of Raleigh to fill the unexpired term of John M. May.

American Bar Association – The Council appointed Kenneth R. Harris of Charlotte to fill the unexpired term of Alexander P. Ryan as Young Lawyer Delegate and Robert F. Siler of Franklin to fill the unexpired term of E. Fitzgerald Parnell, III, who resigned to become State Delegate.

RECOMMENDATION FOR APPOINTMENTS SOUGHT – The Council will make the following appointments at its meeting in April 2007. Anyone wishing to be considered or to nominate someone should contact Tom Lunsford at the State Bar office: 919/828-4620, tlunsford@ncbar.gov, PO Box 25908, Raleigh, NC 27611.

Disciplinary Hearing Commission (3-year terms) – There are three appointments to be made. Stephen E. Culbreth is not eligible for reappointment. F. Lane Williamson and Tommy W. Jarrett are eligible for reappointment.

RANDOM AUDITS – Judicial districts randomly selected for audit during the first quarter of 2007 were District 18, consisting of Guilford County; and District 30, consisting of Cherokee, Clay, Graham, Haywood, Jackson, Macon, and Swain Counties.

ETHICS COMMITTEE – Upon the recommendation of the Ethics Committee, the Council adopted five new ethics opinions: **2006 FEO 15**, which rules that a lawyer may charge a reasonable dormancy fee against unclaimed funds if the client agrees in advance and the fee meets other statutory requirements; **2006 FEO 16**, which rules that under certain circumstances a lawyer may consider a dispute with a client over legal fees resolved and transfer funds from the trust account to his operating account to pay those fees; **2006 FEO 17**, which rules that a lawyer may advertise by autodialing potential clients and playing a recorded telephone message with information about a legal issue or the lawyer's legal services, provided the message does not include a mechanism to connect the recipient directly to the lawyer or an agent of the lawyer;

2006 FEO 18, which rules that, when representation is terminated by a client, a lawyer who had advanced the cost of a deposition and transcript may not condition release of the transcript to the client upon reimbursement of the cost; and **2006 FEO 19**, which rules that the prohibition against communications with represented persons does not apply to a lawyer acting solely as a guardian ad litem.

The committee decided to publish for comment six new proposed opinions and one revised proposed opinion. **Proposed 2007 FEO 1**, which rules that a lawyer owes no duty to the heirs of an estate that he represents in a wrongful death action; **Proposed 2007 FEO 2**, which rules that a lawyer may not take possession of a client's contraband if possession is itself a crime and, unless there is an exception allowing disclosure of confidential information, the lawyer may not disclose confidential information relative to the contraband; **Proposed 2007 FEO 3**, which explains the duties of a lawyer who represents a local government and of a lawyer who is elected to the governing body of the local government relative to a nonlawyer who appears in a representative capacity for a party at a quasi-judicial hearing before the government body; **Proposed 2007 FEO 4**, which provides guidance on miscellaneous issues relative to client seminars and solicitation, gifts to clients, distribution of business cards, and client endorsements; **Proposed 2007 FEO 5**, which rules that a lawyer may use the title "doctor" but only in a post-secondary school academic setting; **Proposed 2007 FEO 6**, which rules that a partnership agreement (or other similar agreement) may include a repurchase or buy-out provision that takes into account the loss in firm value generated by a lawyer's departure, provided the provision is fair and is not based solely upon loss of client billings, and **Revised Proposed 2006 FEO 14**, which rules that when a lawyer charges a fee for a consultation, and the lawyer accepts payment, there is a client-lawyer relationship for the purposes of the Rules of Professional Conduct.

The committee agreed that **Proposed 2006 FEO 3**, *Representation in Purchase of Foreclosed Property*, and **Proposed 2006 FEO 20**, *Use of Departed Lawyer's Surname in Firm Name*, should continue to be studied by subcommittees.

GRIEVANCE COMMITTEE – During the quarter the Grievance Committee considered 327 cases. Six lawyers received letters of caution, twenty-three lawyers received letters of warning, four lawyers were referred to the Lawyer Assistance Program (one lawyer had three cases), four lawyers received reprimands (one lawyer had two cases), eight lawyers received admonitions (one lawyer had three cases), four lawyers received censures (one lawyer had three cases), and eleven lawyers were referred to the Disciplinary Hearing Commission (one lawyer had seven cases, one lawyer had two cases, and one lawyer had three cases).

JUDICIAL SURCHARGE – The Administrative Committee held a hearing at which several members were directed to show cause why they should not be suspended for failure to pay the judicial surcharge. After hearing from two members of the Mecklenburg County Bar and considerable debate, the committee voted to recommend to the Council that the noncompliant members be suspended. The Council subsequently ordered the suspensions, which will take effect 30 days after service, unless payment is made in the meantime.

MANDATORY IOLTA – The Issues Committee received extensive information relating to the concept of mandatory IOLTA and learned that universal participation would probably generate considerable additional revenue to enhance access to justice for North Carolina's poorest citizens. Upon the recommendation of the Issues Committee, the Executive Committee approved in principle the concept of mandatory IOLTA and directed the staff to address all related legal issues and to draft proposed rules for implementation. These proposals will be considered for publication by the Council in April.

PRO BONO REPRESENTATION BY INACTIVE LAWYERS – The Issues Committee also received information concerning a proposal whereby lawyers on inactive membership status might be permitted to render pro bono legal services to indigent persons under the auspices of legal services organizations. This proposal, which originated with the American Bar Association and is supported by the Chief Justice's Equal Access to Justice Commission, would permit large numbers of retired lawyers (and others who are temporarily out of the practice) to employ their legal skills on behalf of disadvantaged persons who might

otherwise have difficulty accessing the justice system. Upon the recommendation of the Issues Committee, the Executive Committee approved this concept in principle and directed the staff to address all related legal issues and to draft proposed rules for implementation. These proposals will be considered for publication by the Council in April.

RULE AMENDMENTS

AMENDMENTS FOR WHICH SUPREME COURT APPROVAL IS PENDING – At its meetings on October 20, 2006, and January 19, 2007, the Council adopted, subject to the Supreme Court's approval, the rules described below:

Amendments to the Rules Governing the Client Assistance Program and the Fee Dispute Resolution Program

27 N.C.A.C. 1A, Section .0700, Standing Committees of the Council

27 N.C.A.C. 1D, Section .0700, Procedures for Fee Dispute Resolution Rules

The amendment to the rule on standing committees of the State Bar Council changes the name of the Client Assistance Committee to the "Attorney/Client Assistance Committee". Amendments to the standing committees rule and to the rules on the procedures for fee dispute resolution also change the name of the program administered by the committee to the "Attorney/Client Assistance Program." Amendments to the rules governing the fee dispute resolution program reflect more accurately the purpose of the program and the role of the fee dispute coordinator.

Amendments to the Rules Governing the Administration of IOLTA

27 N.C.A.C. 1D, Section .1300, Rules Governing the Administration of the Plan for Interest on Lawyers' Trust Accounts

27 N.C.A.C. 2, Rules of Professional Conduct

Rule 1.15-4, Interest on Lawyers' Trust Accounts

In October 2004, the State Bar Council asked the IOLTA Board of Trustees to administer the state funding for legal aid programs that passes through the North Carolina State Bar. The rule amendments clarify that the Board of Trustees has the authority to administer these funds. The amendment to Rule of Professional Conduct 1.15-4 provides that information in the program's possession relating to the bank accounts of participating lawyers will be regarded as "confidential information" not generally available to persons or entities outside of the program. However, the amendments also explain that such information may be made available to agents of the State Bar's disciplinary program upon written request and to other persons pursuant to court order or other legal process.

Amendments to the Rules Governing the Administration of the CLE Program

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program

27 N.C.A.C. 1D, Section .1600, Regulations Governing the Administration of the Continuing Legal Education Program

The amendments clarify the accreditation standards for programs relating to law practice management, skills training and technology training. The amendments also eliminate references to the board's administration of the "law practice assistance program" which is no longer in existence.

Amendments to the Plan for Certification of Paralegals

27 N.C.A.C. 1G, Section .0100, Certification of Paralegals

Amendments to the Plan for Certification of Paralegals address three oversights in the original plan. Amendments to Rule .0105 create a nominating process to focus the voting of certified paralegals on the nominees whose names are sent to the Council for appointment to a paralegal vacancy on the board. Amendments to Rule .0119 provide that the eighteen credit hours required in the educational standard for certification must be obtained in a structured certificate program at a school that has been designated by

the board as a qualified paralegal studies program. Amendments to Rule .0122 create procedures for an applicant to request reconsideration of an unfavorable decision of the board.

PROPOSED AMENDMENTS FOR PUBLICATION – At its meeting on January 19, 2007, the Council voted to publish the following proposed amendments for comment from members of the bar:

Proposed Amendments to Codify the Rulemaking Procedures of the State Bar
27 N.C.A.C. 1A, Section .1400, Rulemaking Procedures

Although the State Bar Council consistently follows a specific procedure for adopting and amending the rules of the State Bar, the procedure itself has never been codified in the official rules of the State Bar. The proposed amendments set forth the procedure.